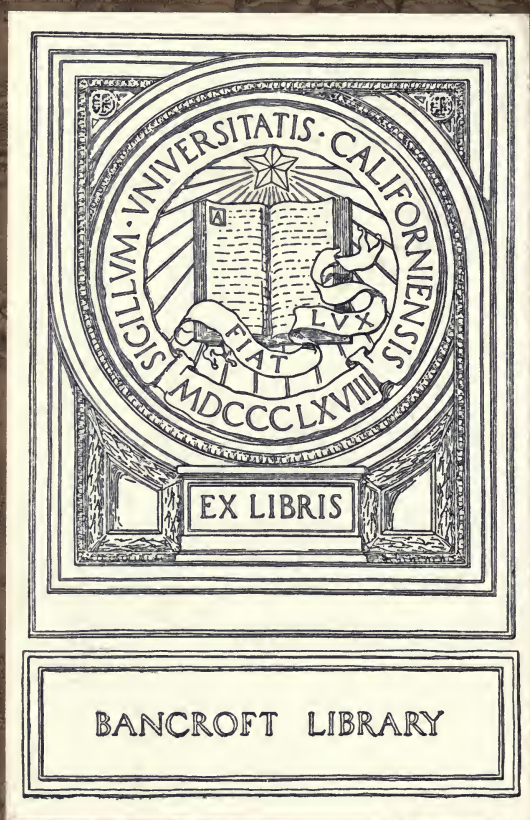


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A PROTEST

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BY THE

DEMOCRATIC SENATORS

OF THE

LEGISLATURE OF CALIFORNIA,

ON THE

RESOLUTIONS CONDEMNING THE PRESIDENT

AND

INDORSING CONGRESS.



SACRAMENTO :

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1868.



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PROTEST.

In the Senate of California, when the resolutions were under discussion condemning the President and indorsing Congress, Senator Maclay, of Santa Clara, presented the following protest, which he desired to have spread upon the Journals:

WHEREAS, an attempt is being made to impeach the President of the United States for an alleged violation of the "Tenure of Office Act," Congress asserting and the President denying the validity of said Act;

And whereas, THE PEOPLE, in their wisdom, have "provided a suitable mode and tribunal for settling questions of constitutional law," by declaring, in the Constitution, that the judicial power of the Government "shall extend to all cases arising under the Constitution and Laws of the United States;"

And whereas, in pursuance of the clear and express provisions of that instrument, "Congress, at its very first session, by the 'Judicial Act,' provided a mode for carrying the fundamental law into effect and for bringing all questions of constitutional authority to a final decision at the bar of the Supreme Court;"

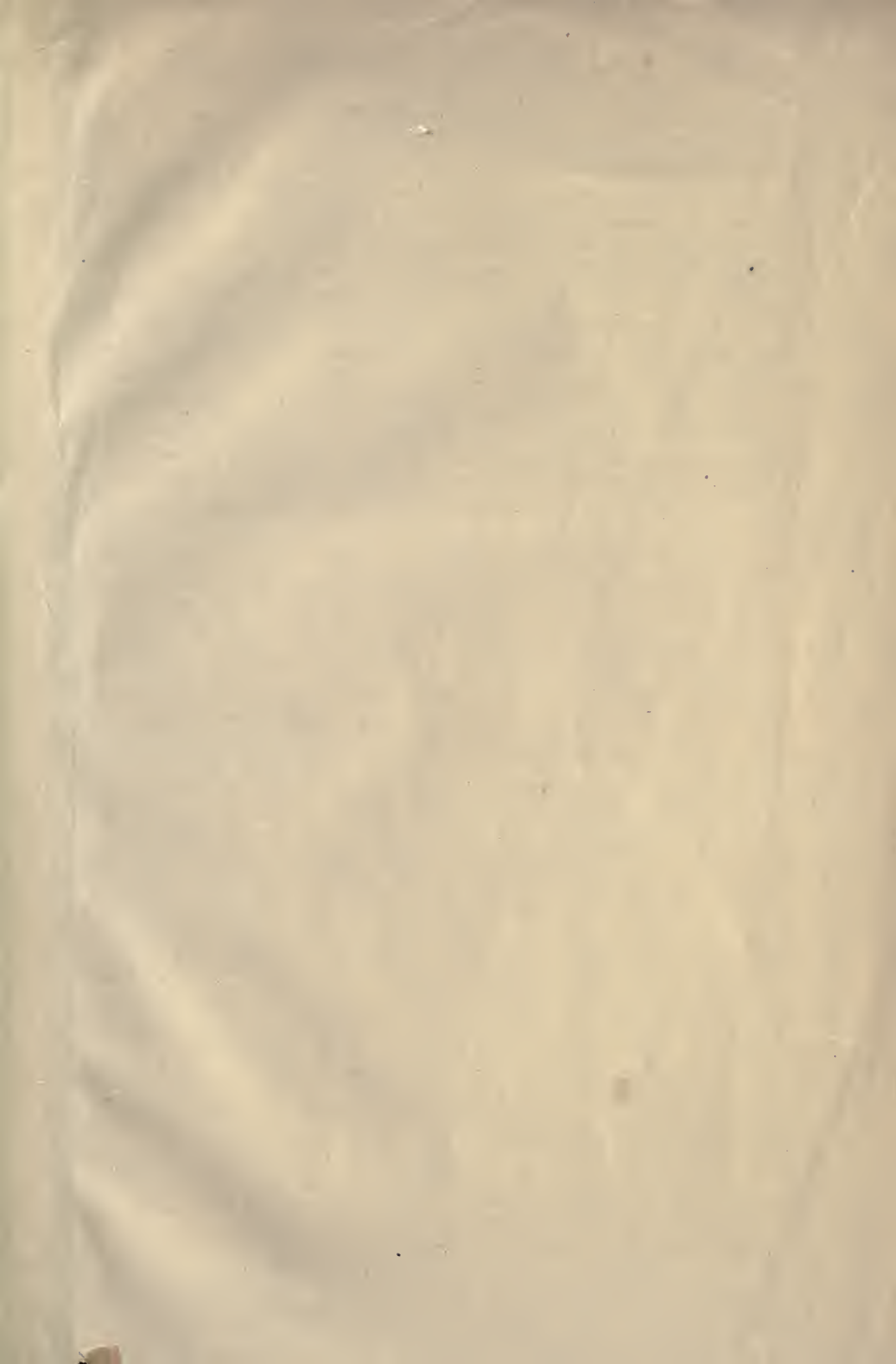
In view of these facts, it is our opinion that Congress has no right to usurp the functions of the Judiciary by passing on the constitutionality of their own enactments and enforcing their construction thereof on the other departments of Government. That the President, in the discharge of his sworn duty to "defend the Constitution," has the right, and that it is his duty, if he believes an Act of Congress unconstitutional, to resist its enforcement until a judicial decision is had. That Congress, in the passage of an Act, believing it to be warranted by the Constitution, commits no wrong should the Act prove unconstitutional. And, on the other hand, that the President does no wrong in resisting the execution of an Act of Congress, believing it to be in violation of the fundamental law should it prove to be valid. For both discharge the duties imposed upon them and the trust committed to them under the dictates of conscience, the acts of each lacking that intention which must be coupled with every act to constitute criminality. That when such a case does arise it is beneath the dignity of the Executive or of Congress, and dangerous to

the stability of our Government and the liberties of our free people, for the one to impute criminality to the other; but much less right has the Executive Department to attempt the destruction of the Legislative Department for the passage of such an Act, or the Legislative the right to attempt the destruction of the Executive Department for refusing to enforce such an Act. That the remedy for the mischief done by either lies in an appeal to the Judiciary; that when their decision is made it is final and binding on the other departments. Submission then becomes a duty and resistance a crime.

For these reasons we believe the impeachment, conviction and removal of the President from office on the charge of having violated, or attempted to violate, the provisions of the "Tenure of Office Act," before the Supreme Court shall have first decided that Congress had the authority to pass said Act, would be a measure not only of folly and of injustice to the President, for which no adequate atonement could be offered, but would entail great reproach and odium on Congress and the country.

Therefore, influenced solely by a sincere desire to preserve the peace, the honor and the dignity of our common country, believing that all proceedings touching the matter of impeachment should be arrested, at least until the Supreme Court shall have decided whether, in point of fact and of law, the "Tenure of Office Act" be constitutional—we, the representatives in the Senate of principles which we believe to be dominant in this State, do hereby solemnly protest against the resolutions on the question of impeachment, passed by this body.

JOHN H. SAUNDERS,
JOHN S. HAGER,
G. W. HUNTER,
CHARLES MACLAY,
A. H. ROSE,
J. W. MANDEVILLE,
N. GREENE CURTIS,
WM. WIRT PENDEGAST,
JAMES JOHNSON,
WM. A. CONN,
F. A. MACDOUGALL,
J. W. FREEMAN,
D. L. MORRILL,
WM. J. SHAW,
E. J. LEWIS,
P. W. MURPHY,
JAMES H. LAWRENCE,
GEORGE PEARCE,
H. KINCAID.



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